

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 03-1568V

Filed: December 15, 2010

Not to be Published

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Kelly Kelly, parent of  
Robert Kelly, a minor,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES

Respondent.

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Dismissal; Failure to Follow Court  
Orders; Failure to Submit Supporting  
Medical Records or Expert Opinion;  
Failure to Prosecute

### DECISION<sup>1</sup>

The above-named petitioner filed a Short-Form Autism Petition For Vaccine Compensation on June 30, 2003. Thereafter, petitioner failed to file medical records and/or a “Statement of Compliance with Phase One Medical Records Production” as ordered by the undersigned on May 15, 2008, May 4, 2009, and September 25, 2009.

The undersigned repeatedly warned petitioner that noncompliance with court Orders would not be tolerated and could lead to dismissal of petitioner’s claim. See Order filed May 4,

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<sup>1</sup> The undersigned intends to post this decision on the United States Court of Federal Claims’s website, in accordance with the E-Government Act of 2002, Pub.L.No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to file a motion for redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). In the absence of such motion, “the entire” decision will be available to the public. Id

2009; Order filed September 25, 2009. Further, the undersigned warned petitioner in the court's September 25, 2009 Order, that "failure to follow court Orders, as well as failure to file medical records, or an expert medical opinion shall result in dismissal of petitioner's claim." Order filed September 25, 2009 citing Tsekouras v. Sec'y of HHS, 26 Cl. Ct. 439 (1992), 991 F.2d 810 (Fed. Cir. 1993) aff'd per curiam without opin; Sapharas v. Sec'y of HHS, 35 Fed. Cl. 503 (1996).

Petitioner has failed to file any medical records or the opinion of an expert to support petitioner's claim in the instant case.<sup>2</sup> Additionally, petitioner has failed to respond to any of the court's Orders in any manner in the instant case. Accordingly, pursuant to Vaccine Rule 21(b), the undersigned dismisses petitioner's claim for failure to prosecute or comply with the Vaccine Rules, or the court's Orders. The Clerk shall enter judgment accordingly.

**IT IS SO ORDERED.**

s/Patricia E. Campbell-Smith  
Patricia E. Campbell-Smith  
Special Master

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<sup>2</sup> The Vaccine Act provides that a special master cannot find that a petitioner has proven her case by a preponderance of the evidence based upon "the claims of a petitioner alone, unsubstantiated by medical records or medical opinion." 42 U.S.C. § 300aa-13 (a). Petitioner's failure to file medical records has prevented the undersigned from addressing any aspect of the merits of petitioner's claim.